

DEPARTMENT OF MENTAL HEALTH

POLICY / PROCEDURE



SUBJECT: DUTY TO WARN AND PROTECT THIRD PARTIES IN RESPONSE TO A THREAT (TARASOFF DECISION)	POLICY NO. 202.2	EFFECTIVE DATE 10/01/89	PAGE 1 of 4
APPROVED BY: Original Signed by: ROBERTO QUIROZ Director	SUPERSEDES 102.2 10/01/89	ORIGINAL ISSUE DATE 09/12/79	DISTRIBUTION LEVEL(S) 2

- PURPOSE:**
- 1.1 To provide guidelines as to the implementation of State law and the Tarasoff Decision by designated professional and para-professional staff, hereafter referred to as “psychotherapists” and/or “therapist” of the Department of Mental Health (DMH) and contract agencies coming under the jurisdiction of Short-Doyle programs.
- BACKGROUND:**
- 2.1 According to Section 43.92 of the Civil Code, psychotherapists must warn and attempt to protect any reasonably identifiable victim or victims of a serious threat communicated to the psychotherapist by a patient or client. This section further states that if there exists the responsibility to “warn and protect . . . the duty shall be discharged by the psychotherapist, making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.” Under this statute, psychotherapists are legally liable only if a threat has been communicated (in any form) and if it is against a “reasonably identifiable” victim or victims.
 - 2.2 Additionally, Section 5328 of the Welfare and Institutions Code (W&I) states that when, in the opinion of the psychotherapist, a patient presents a serious danger of violence to a reasonably foreseeable victim or victims, then records and information obtained during the course of services delivered to patients under the W&I Code may be released to the person or persons potentially at risk of danger. The type and scope of the information so released is left to the discretion of the psychotherapist, but it should be the minimum needed for the protection of the intended victim(s).
 - 2.3 The Tarasoff Decision requires a therapist to take precautions to protect third parties who may be the objects of serious threats made by patients during the course of therapy. In the decision, the California State Supreme Court stated, in part, the following:

“When the therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs the obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending on the nature of the case. Thus, it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify police, or to take whatever steps are reasonable necessary under the circumstances.”

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- POLICY:**
- 3.1 The DMH will implement and adhere to the stipulation heretofore referred to in the Civil Code, Welfare and Institutions Code and Tarasoff Decision regarding the duty to warn and protect third parties at risk of injury or death from patients/clients within the Short-Doyle system. Both public and private Short-Doyle agencies are affected by this policy.
- PROCEDURE:**
- 4.1 When a person, whether during some initial contact or during the course of service, communicates to any staff in a DMH program a serious threat of physical violence against a reasonably identifiable victim or victims, then actions pursuant to the stipulations in the Civil Code and Tarasoff Decision will be implemented in order to protect the third party. Only the minimum amount of the information necessary to protect the intended victim may be released. This exception to patient confidentiality should be carried out with care and consideration, the maintenance of the therapeutic relationship as an objective.
- 4.2 Should a question remain as to whether State law applies to a particular case, appropriate Departmental staff should be consulted. If questions remain, County Counsel may be consulted through DMH Executive Staff. With the exception of specific reporting laws, such as Child Abuse, Dependent Adult Abuse and Elder Abuse, staff are not obligated by this policy or existing law to report crimes already committed which are revealed to the therapist during the course of treatment.
- 4.3 Each Short-Doyle contractor will develop a policy relevant to the protection of third parties which is consistent with State law. The policy should include recourse to legal counsel should questions arise as to whether State law applies to a particular case.
- 4.4 The following steps are applicable to Los Angeles County Department of Mental Health employees only when a client communicates to any staff a serious threat of physical violence against a reasonably identifiable victim or victims:
- 4.4.1 Non-Clinical Staff should immediately report any such communication to a clinical supervisor (or designee) for action as stated below.
- 4.4.2 Clinical Staff, bearing in mind the urgency of the danger, should do the following:
- 4.4.2.1 Review available past and present history and treatment of the patient.

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- 4.4.2.2 Discuss 4.4.2.1 with the clinical supervisor of the director (or designee) of the facility, whether the patient presents a serious danger to a reasonably identifiable/foreseeable victim or victims, or does not.
- 4.4.3 Should a question remain as to whether the law applies, then the following occurs:
 - 4.4.3.1 A higher level of clinical supervision should be consulted.
 - 4.4.3.2 Should questions still remain, County Counsel may be consulted by an Executive Staff member.
- 4.4.4 If it is decided that the patient presents no serious danger to others, then no action should be taken except to document in the chart that there was a specific case review concerning the issue and the results of that review.
- 4.4.5 If it is decided that the patient presents a serious danger to a reasonably identifiable/foreseeable victim or victims, the following three actions should be taken:
 - 4.4.5.1 If the patient has a mental disorder and can be located, involuntary hospitalization should be instituted. The receiving hospital shall be notified by the staff initiating the involuntary detention of the efforts to warn a potential victim. If unable to locate, notify local law enforcement of the need to locate the patient.
 - 4.4.5.2 Whether or not the patient is hospitalized, clinical staff should make reasonable attempts to contact the parties to whom the Information was released.
 - 4.4.5.3 Contact can be made through telephone, telegram or visitation. Documentation in the patient's chart is required. It should contain specific efforts to contact the potential victim, times and dates of these attempts written in the progress notes, retaining copies of written correspondence and contact with family or friends with specific times and names noted in the progress notes.

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- 4.4.5.4 Clinical staff should contact the local law enforcement agency having jurisdiction where the possible victim resides and record in the clinical record the name of the person to whom the report made with the date, time and content released.

AUTHORITY: Civic Code, Section 43.92
Welfare and Institutions Code, Section 5328
Tarasoff Decision